

A. CRIMINAL

1. DISTRICT COURT CASES

Attorneys who wish to accept misdemeanors and concurrent felonies in the District Court must (1) be accepted into the panel of attorneys of a county bar advocate program; and (2) complete a required training program. For information on becoming a bar advocate, contact the program in the counties in which you wish to practice. A directory of these programs is included in this manual. No attorney may be a member of more than two bar advocate programs, except attorneys certified as bilingual by the Committee.

Training Requirement

The training requirement is satisfied by attendance at a five-day seminar, Zealous Advocacy. The program is administered through Massachusetts Continuing Legal Education (MCLE) at various locations throughout the state several times a year. Applications are in the MCLE course catalogue. A schedule of training programs and registration information can be obtained by contacting MCLE (617/350-7006) or the CPCS Training Unit (617/482-6212).

Certification

Attorneys who complete the training requirement are certified to represent indigent adults who are charged with misdemeanors and felonies that are within the final jurisdiction of the District Court as set forth in G.L. c.218, Sec. 26. Attorneys who complete this training are also certified to represent indigent juveniles in juvenile delinquency cases (see juvenile delinquency section of this chapter).

Initial certification is provisional, subject to performance evaluation by the county bar advocate program conducted within 12 to 24 months. The evaluation will include file review of cases prepared for trial and cases of clients in custody. Cases will be selected for review by the Supervising Attorney conducting the evaluation. The certification determination will be based upon evidence of compliance with relevant Performance Guidelines set out in this Manual, with particular attention to:

- (1) prompt and consistent client communication
- (2) pretrial preparation including witness interviews and appropriate use of investigators
- (3) legal research and filing of memoranda of law
- (4) conduct of trials and litigation of substantive motions
- (5) cooperation with Resource Attorney
- (6) lack of substantiated client complaints.

Attorneys certified for District Court cases may also represent indigent defendants charged with Superior Court felonies in the district court for arraignment and bail hearings only. If the attorney is not Superior Court certified, s/he must immediately

notify the Bar Advocate Program of the need for prompt reassignment of a bindover felony case after the arraignment.

Dangerousness hearings under G. L. c. 276, Sec. 58A are considered substantial proceedings in the case, requiring the same certification as the case in chief. Dangerousness hearings in bindover felony cases must be handled by Superior Court certified attorneys only. If a dangerousness hearing in a bindover felony case is requested by the prosecutor, assigned counsel lacking certification to handle the case in chief should request a brief continuance and immediately notify the Bar Advocate Program to promptly reassign the case.

In order to handle probable cause hearings in District Court or Superior Court jurisdiction felonies (other than arraignment and bail hearing), attorneys must be certified for Superior Court cases. Additional certification is also required for Youthful Offender, CHINS, and care and protection cases.

Assignment of Cases

District Court cases are assigned through the county bar advocate programs.

Performance Requirements

Attorneys who accept District Court cases, must represent their clients at all stages of the criminal proceedings in the District Court. In the event of a final conviction in the District Court, it is the responsibility of the trial attorney to file a Notice of Appeal, Motion to Withdraw, and a Motion for Appointment of Substitute Counsel for Appeal. Trial counsel should then notify the CPCS Private Counsel Appeals Assignment Unit of the need for appellate counsel to be assigned.

By accepting assignments on District Court cases attorneys agree to abide by the CPCS Performance Standards Governing Representation of Indigents in Criminal Cases, which are found in this manual.

2. MURDERS AND SUPERIOR COURT CRIMINAL MATTERS, INCLUDING PROBABLE CAUSE FELONIES IN DISTRICT COURTS

The Committee has adopted qualification standards for murder cases and Superior Court criminal matters, including probable cause felonies in district courts. Attorneys who wish to be eligible for assignments in these matters must apply in writing to the Chief Counsel of the Committee demonstrating that they meet the standards set. They will be notified of their status and, if they are approved, they will be placed on the panel. Those standards follow.

FIRST- AND SECOND-DEGREE MURDER CASES

Attorneys who wish to be certified to accept first- and second-degree murder cases must be individually approved by the Chief Counsel of CPCS. Each applicant must meet the minimum requirements set forth below. In addition, the Chief Counsel may consider any and all additional information that s/he deems relevant to an appropriate decision on each application. In reaching this decision, the Chief Counsel receives a recommendation on each application from a Certification Advisory Board consisting of senior private practitioners from around the state.

Training Requirement: None

Minimum Requirements:

1. Five years' criminal litigation experience
2. Familiarity with practice and procedure of Massachusetts criminal courts
3. Lead counsel during the preceding five years in at least ten jury trials of serious and complex cases, at least five of which have been life felony indictments, in which the cases resulted in a verdict, decision or hung jury
4. Familiarity with and experience in the utilization of expert witnesses, including psychiatric and forensic evidence
5. Attendance at specialized training programs (such as MCLE or bar association criminal practice programs, National Institute for Trial Advocacy, National Criminal Defense College)

Application Procedure:

Attorneys seeking murder assignments should complete and submit an application form obtainable from the Committee's Certification Unit, as well as any additional information relevant to the above-stated requirements.

A list of cases which meet requirement (3) above must be included, giving the name of the case, indictment numbers and charges, names of judges and prosecutors, dates of trial, and a short statement of each case which includes a description of the major issues. Specific cases describing the applicant's utilization of expert witnesses should be included. In addition, the applicant should submit the names, dates, and sponsors of training programs which meet requirement (5) above, as well as the names and addresses of three criminal defense practitioners familiar with the applicant's work. The letter and attachments should be sent to:

CPCS Chief Counsel
44 Bromfield Street
Boston, MA 02108
Attn: Certification Coordinator for Criminal Cases

Applicants will be notified of the decision of the Chief Counsel within 8-12 weeks.

Certification for murder assignments is valid for a term of 4 or 5 years, after which each attorney may seek recertification. Eight (8) hours per year of relevant legal education are required to maintain this certification. Attorneys should maintain records of their continuing legal education in the event they apply for recertification.

Assignment of Cases:

Under the provisions of c.211D, Sec. 8, the Chief Counsel will assign murder cases to attorneys certified to handle such cases, subject to the approval of the justice making the determination of indigence.

Performance Requirements:

Attorneys who accept murder cases must represent their clients at all stages of the criminal proceedings except the appeal of a conviction to the Appeals Court or Supreme Judicial Court. In the event of a conviction, however, it remains the responsibility of the trial attorney to file a Notice of Appeal, a Motion to Withdraw, and a Motion to Appoint Substitute Counsel for Appeal, and to notify CPCS of the need for appellate counsel to be assigned.

In addition to representing the client in Superior Court, the attorney who accepts a murder case must provide representation at the probable cause hearing or any other District Court proceeding.

By accepting assignments on murder cases, attorneys agree to abide by the CPCS Performance Guidelines Governing Representation of Indigents in Criminal Cases, which are found in this manual.

3. SUPERIOR COURT JURISDICTION CASES

In order to be certified to accept Superior Court cases (that is, any charge which is beyond final jurisdiction of the District Court as set out in G.L. c.218, sec. 26), attorneys must be individually approved by the Chief Counsel of CPCS.

Attorneys who seek to obtain the approval of the Chief Counsel must meet the minimum requirements set forth below. In addition, the Chief Counsel may consider any and all additional information that s/he deems relevant to an appropriate decision on each application.

Certification for Superior Court assignments is valid for a term of 4 or 5 years, after which each attorney may seek recertification. Eight (8) hours per year of relevant legal education are required to maintain this certification. Attorneys should maintain records of their continuing legal education in the event that they apply for recertification.

Training Requirement:

There is no training prerequisite for initial certification; 8 hours of CLE per fiscal year is required for recertification.

Minimum Requirement:

Applicants who meet the criteria described in any one of the following four categories are eligible to apply to the Chief Counsel for approval for Superior Court cases. To apply, the applicant must:

(A) Be certified by CPCS to accept murder cases;

OR

(B) Meet the minimum requirements for certification for murder cases (outlined in this manual);

OR

(C) Have tried at least six Jury of Six or Superior Court criminal jury trials to verdict in the last five years as lead counsel;

OR

(D) Have other significant experience which demonstrates qualification to accept Superior Court assignments and demonstrates familiarity with the practice and procedures in the Massachusetts criminal courts.

Application Procedure:

Attorneys seeking Superior Court assignments should complete and submit an application form obtainable from the Committee's Certification Unit, as well as any additional information relevant to the above-stated requirements.

Applicants who are applying pursuant to section (B), (C), or (D) above should fully describe the cases which meet the requirements, giving the names of the cases, indictment numbers and charges, names of judges and prosecutors, dates of trials, and a short statement of each case which includes a description of the major issues. Specific cases describing the applicant's utilization of expert witnesses should be included. In addition, the applicant should submit the names, dates, and sponsors of training programs, as well as the names and addresses of three criminal defense practitioners familiar with the applicant's work. The letter and attachments should be sent to:

CPCS Chief Counsel
44 Bromfield Street
Boston, MA 02108
Attn: Certification Coordinator for Criminal Cases

The Chief Counsel will notify the applicant when a decision has been made.

Certification for Superior Court assignments is valid for a term of 4 or 5 years, after which each attorney may seek recertification. Eight (8) hours per year of relevant legal education are required to maintain this certification.

Assignment of Cases:

Superior Court certified attorneys may be assigned Superior Court jurisdiction cases in District Court as bar advocate duty attorneys, or may receive assignments from bar advocate programs immediately after arraignments handled by bar advocate duty attorneys who are not Superior Court certified. Superior Court certified attorneys may also be assigned cases in Superior Court after direct indictment.

Performance Requirements:

Attorneys who accept Superior Court cases must represent their clients at all stages of the criminal proceedings except the appeal of a conviction to the Appeals Court or Supreme Judicial Court. In the event of a conviction, however, it remains the responsibility of the trial attorney to file a Notice of Appeal, a Motion to Withdraw, and a Motion to Appoint Substitute Counsel for Appeal, and to notify CPCS of the need for appellate counsel to be assigned.

In addition to representing the client in Superior Court, the attorney who accepts a Superior Court case must provide representation at the probable cause hearing or any other District Court proceeding and any sentence appeal before the Appellate Division of the Superior Court.

By accepting assignments on Superior Court cases, attorneys agree to abide by the CPCS Performance Guidelines Governing Representation of Indigents in Criminal Cases, which are found in this manual.